IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.660 OF 1990

DATE OF DECISION: JULY 11, 2007

Balbir Singh @ Billas

.....Petitioner

VERSUS

The State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. G. S. Punia, Advocate,
for the petitioner.

Mr. Shilesh Gupta, DAG, Punjab,
for the State.

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RANJIT SINGH, J.

The petitioner was convicted for an offence under Section 9 (a) of the Opium Act and sentenced to suffer RI for 9 months coupled with fine of Rs.2000/-. He was further directed to undergo RI for 3 months in case of default of fine. He remained unsuccessful before the appellate Court as well and as such, has filed the present revision petition, challenging his conviction and award of sentence as noted.

The facts which led to his conviction and award of sentence, in brief, are that, the petitioner on 10.11.1982 at about 7.30 P.M., was found in possession of 11 Kgs. Of opium at new Bus Stand, Ludhiana. The opium was

recovered by Inspector Ajit Singh in the presence of ASI Mulkh Raj and Head Constable Nachhatar Singh. He could not show any licence for possessing the contraband and was arrested. After completing investigation, challan was filed, leading to his conviction and sentence under Section 9 of the Opium Act.

Before taking up the case on merit, a point of significance seems to have been noted in this case, which may need to be dealt with first.

It is noticed that the petitioner has filed this revision on 17.8.1990 and the same is pending since then. It came up for hearing on few occasions in the years 2004-05, before it was taken up on January 6, 2006. In the course of hearing, this Court noticed that upon conviction of the petitioner under Section 9(a) of the Opium Act, he was sentenced on 30.4.1990. The incident for which the petitioner is convicted is dated 10.11.1982. Noticing that the Opium Act was repealed on the date of conviction and that wording of Section 82 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”), relating to repeals and savings was couched in a manner which may give rise to an important point as to whether trial of the petitioner under Section 9(a) of the Opium Act could be proceeded with by the Magistrate or not. Further noticing that this was likely to arise in large number of similar cases in pending appeals and revisions, the Standing Counsel for Union Territory as well as Advocate General of Haryana were also put to notice. Advocate General, Punjab, was already represented. The case was heard on different occasions till it was taken up for hearing today.

Mr.Punia, appearing for the petitioner, by referring to Section 6 of the General Clauses Act, 1897 and the contents of Section 82 of the NDPS Act would say that trial by Magistrate conducted in this regard would not be without jurisdiction in any manner irrespective of the fact that the Opium Act stood repealed on the day the petitioner was convicted. In support of his submission, the counsel has referred to various judgments. In ***M/s P.V.Mohammad Barmay Sons Vs. Director of Enforcement,*** AIR 1993 Supreme Court 1188, the Hon'ble Supreme Court went into the effect of Foreign Exchange Regulations Act, 1947 (for short, "the Act") and Section 6 of the General Clauses Act. The Hon'ble Supreme Court held that though the Act obliterates the operation of Act 7 of 1947 but the effect was that despite its repeal, the penalty, liability, forfeiture or prosecution for acts done while the repealed Act was in force were kept alive, though no action thereunder was taken when the Repealed Act was in force. It was further held that the rights acquired or accrued or the liabilities incurred or any penalty, forfeiture or punishment incurred during its operation are kept alive. Similar issue arose before the Hon'ble Supreme Court in the case of ***Jagan M.Seshadri Vs. State of Tamil Nadu,*** AIR 2002 Supreme Court 2399 where it was dealing with the repealed provisions of Prevention of Corruption Act, 1947 by similar Act of 1988. This was a case where Act of 1947 was in operation when the offence allegedly took place. During the pendency of proceedings, the Act was repealed. The appellant in that case had been charged under Section 5(1)(e) of the Prevention of Corruption Act, 1947. High Court observed that this Act stood repealed with effect from 9.9.1988,

which was the date of framing of charge against him and hence, he was required to be charged under Section 13(1)(e) read with Section 13(2) of 1988 Act and not under Section 5(1)(e) of 1947 Act. The Hon'ble Supreme Court while allowing the appeal in that case has held that when the offence is/was committed, the Act of 1947 was in operation and accordingly observation of the High Court that he was required to be charged under Section 13 of 1988 Act is wholly misplaced. Referring to Section 30(2) of 1988 Act, the Hon'ble Supreme Court held that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act. The Hon'ble Supreme Court further held that this provision did not substitute Section 13 in place of Section 5 of 1947 Act. It was further observed that Section 30(2) is applicable without prejudice to the application of Section 6 of the General Clauses Act, 1897 and application of Section 13 of 1988 Act, in this fact situation, was held to be offending Section 6 of the General Clauses Act. In ***State of Punjab Vs. Harnek Singh***, AIR 2002 Supreme Court 1074, the Hon'ble Supreme Court while reversing the view taken by this Court in the said case (1999 Cri.L.J. 635 (Punj. & Har.) held that notification issued under the Prevention of Corruption Act, 1947, authorising Inspector of Police in Special Inquiry Agency of Vigilance Department, Punjab, are saved under saving provisions of re-enacted Prevention of Corruption Act,1988. Reference in this regard can also be made to the case of ***State of Punjab Vs. Mohar Singh***

Pratap Singh, AIR 1955 Supreme Court 84, for seeing the effect of Section 6 of the General Clauses Act, whenever there is repeal of enactment. The Hon'ble Supreme Court in this case observed that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow, unless as the section itself says, a different intention appears in the case. It may further need a notice that High Court in this case had negated the contention by holding that Section 6 of the General Clauses Act could be attracted only when an Act or regulation is repealed simpliciter but not when the repeal is followed by a re-enactment. Noticing the law in England, the Hon'ble Supreme Court in this case observed as under:-

> "6. Under the law of England, as it stood prior to the interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law: Vide Craies on Statute Law, 5th can. Page 323. A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right: Vide Crawford on Statutory Constitution, pp.599-600. To obviate such results a practice came into existence

in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repeated enactment.

Later on, to dispense with the necessity of having to insert a saving clause on each occasion, Section 38 (2) was inserted in the interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as Section 38(2) of the Interpretation Act of England."

After elaborate discussion, the Hon'ble Supreme Court held:-

"Whenever there is a repeal of an enactment; the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary. But when the repeal is followed by fresh legislation on the same subject we

> would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.
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> The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is report of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the Section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material."

In the light of the law laid down by the Hon'ble Supreme Court in the above noted judgments, there is not much scope of dispute that despite its repealed, the penalty, liability, forfeiture or prosecution for acts done by the Repealed Act was enforced, seems to have been kept alive. Section 82 of the NDPS Act, relating to repealing and savings reads as under:-

> "82. Repeal and Savings:- (1) The Opium Act, 1857 (13 of 1857), the Opium Act, 1878 (1 of 1878) and the Dangerous Drugs Act, 1930 (2 of 1930) are hereby repealed.

> Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any of the enactments repealed by sub-section (1) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act."

There is clear intention to save anything done or action taken or purported to have been taken or done under the repealed enactment. This would also be the consequences in view of the provisions of Section 6 of the General Clauses Act, 1897, which reads as under:-

> "6. **Effect of repeal:-** Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-
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> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
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> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
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> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
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> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed

against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

It is, thus, clear that Section 6 of the General Clauses Act, in addition to the saving clause, investigation, legal provisions or remedies can be continued or enforced as if the repealing Act or Regulation had not been passed. The provisions of repealing clauses in newly Foreign Exchange Regulation Act, 1973, was identically worded as provisions of Section 82 of NDPS Act. Section 81 of the Foreign Exchange Regulation Act, 1973, read like this:-

"(2) "anything done"..... under the Acthereby repealed shall, in so far as it is not consistent with the provisions of this Act, be termed to have been done or taken under the corresponding provisions of this Act."

Similarly, the saving clause under the Prevention of Corruption Act is also almost identically worded, as can be noticed from Section 30(2) of the said Act, which is re-produced below:-

"(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the

> General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act."

Thus, no infirmity, as noticed, can be found in the magistrate holding the trial under the Opium Act despite its repeal during the pendency of the proceedings in view of the provisions of saving clauses in the form of Section 82 under the NDPS Act read with Section 6 of the General Clauses Act.

The case of the prosecution was supported by the evidence of Ajit Singh, PW2 (DSP at the time of trial), Mulkh Raj (SI at the time of trial). The recovery memo was attested by Mulkh Raj, PW1 and Head Constable Nachhatar Singh. Relying upon the evidence of these witnesses, the trial Court convicted the petitioner. The appellate Court found that there was no material discrepancy in the statements of the witnesses. The defence had also not made any allegation of any oblique motive on the part of police officials to book the petitioner. The primary submission made on behalf of the petitioner was that the prosecution case mainly depended on uncorroborated evidence of two police official witnesses and was not supported by evidence of any independent witness. The defence version, introduced through Pritam Singh Sethi (DW1), was found to be totally unworthy of reliance and was rejected. The defence

attempted to project that the petitioner was falsely implicated and was picked up from his house about 7-1/2 years ago and this recovery was planted on him. It was found that defence witness, Pritam Singh Sethi, was closely related to the petitioner as his sister is married to the son of the witness. This DW has come up to give evidence after 7-1/2 years. The Court rightly noticed that if the petitioner was falsely implicated in this case, he could not be expected to sit quite for such a long period and then suddenly come up to give evidence in this manner at the time of trial. Nothing substantial has otherwise been submitted, which may call for any interference in the finding returned by the Court.

Mr.Punia thereafter pleaded for leniency in the award of sentence for the petitioner. He prays that the period of sentence be reduced to the period already undergone. This incident is of 1982 and the petitioner faced protracted trial for nearly 8 years before he was convicted in the year 1990. The present revision is pending for the last 17 years. In all the petitioner has suffered the agony of trial for a period of 25 years. Requiring him to undergo the sentence at this stage would not be just and fair. A similar course was adopted by this Court in the case of ***Iqbal Singh Vs. State of Punjab***, 1994 (2) RCR (Crl.) 388 (P&H) and ***Joginder Singh Vs. State of Punjab,*** 2004 (4) RCR (Criminal) 198.

Keeping in view the above noted facts and circumstances, the sentence awarded to the petitioner shall stand reduced to the period already undergone by him. His conviction, however, will remain. The fine, if not paid, shall be paid by the petitioner and in default thereof, he shall be liable to undergo the

sentence as directed in the impugned order.

Subject to above modification in the sentence as indicated, the revision petition shall stand dismissed on merits.

July 11, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**